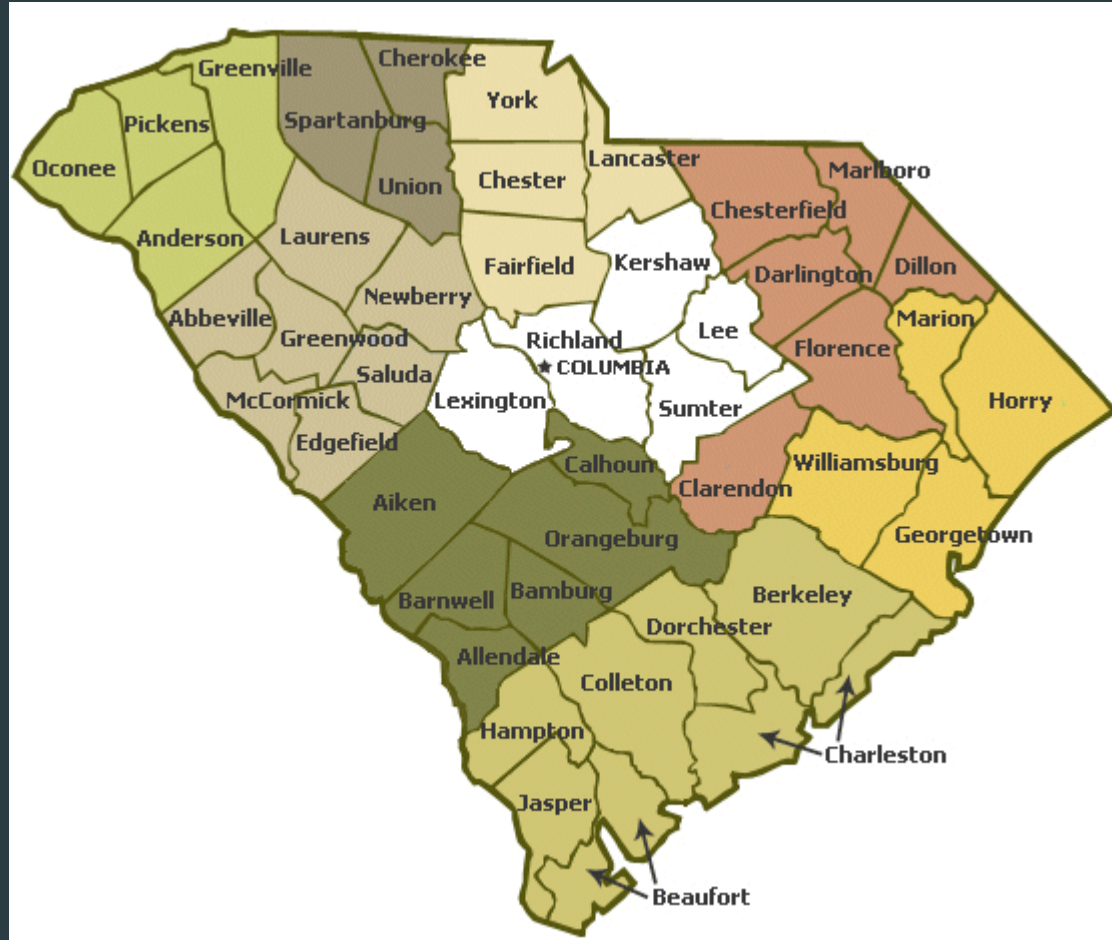


The SC Landlord/Tenant Act

The Law, Common Issues, and Suggestions from the Trenches

South Carolina Legal Services



A statewide law firm that provides civil legal services to protect the rights and represent the interests of low-income South Carolinians.

Agenda

- I. Basic State Landlord/Tenant Law
- II. Common Issues
- III. Hot Topics - VAWA
- IV. Q&A

Disclaimer

▶ This is not legal advice!

- ▶ It does not create an attorney-client relationship between us.
- ▶ This is general information that may or may not apply to your situation.
- ▶ In many cases, there is not one rule that covers all situations.
- ▶ Rules usually have exceptions, your situation may be one!



Landlord and Tenant Rights: Where Do They Come From?

▶ The Lease

- ▶ It's a contract: An agreement that sets rights and responsibilities.
- ▶ Many rights will be set by this agreement.
 - ▶ E.g., what property you're renting, how much the rent is, when it's due, etc.

▶ The Law

- ▶ Can “fill in the gaps” if the rental agreement doesn't have some things in it.
 - ▶ E.g, if the rental agreement doesn't say different, then you're usually renting from month-to-month.
- ▶ Sets some “ground rules”
- ▶ Prohibits some things even if they're in the rental agreement

Payment of Rent

- ▶ LL has the right to be paid rent on time
 - ▶ T can be evicted if rent is more than 5 days late unless the lease or other law says otherwise.
 - ▶ LL doesn't have to chase T down for rent.
 - ▶ But, LL does have to give written notice which gives T at least 5 days to pay the rent that is owed before filing an eviction case.
 - ▶ This written notice can be in your lease, meaning you don't have to give a separate written notice once the tenant is late on their rent. Look at 27-40-710 for suggested language.
 - ▶ NOTE - your notice should give T 5 days to pay the rent...not just 5 days to move out.

Maintaining the Property

- ▶ This is a shared responsibility.
- ▶ LL has to:
 - ▶ Keep the property in a “fit and habitable condition” and comply with certain building/housing codes;
 - ▶ Maintain any appliances that come with the property and any that are required for “essential services” (e.g., heat, running water, hot water, etc.)
 - ▶ Make “essential services” available
 - ▶ E.g., heat, running water, hot water, etc.
 - ▶ Doesn’t necessarily mean LL has to pay for them, just that they be made available.
 - ▶ In Section 8, also have to comply with other requirements like HQS. *This is practically the same as the Int’l Property Maintenance Code.*

Maintaining The Property

- ▶ T has to:
 - ▶ Keep things safe and clean
 - ▶ Take out the trash
 - ▶ Use the premises/appliances in a “reasonable manner”
 - ▶ Follow reasonable LL rules
 - ▶ Control guests
 - ▶ Don’t disturb other tenants

Maintaining the Property

- ▶ If landlord doesn't maintain the property or doesn't make repairs:
 - ▶ Tenant CANNOT make repairs and deduct the cost from rent without an agreement between landlord and tenant (preferably in writing).
 - ▶ Essential services are the only exception (water, heat, power, etc.)
 - ▶ Tenant CANNOT stop paying rent.
 - ▶ Tenant CAN:
 - ▶ Give the landlord written notice that repairs need to be made within 14 days.
 - ▶ If the repairs are going to take longer than 14 days but the landlord makes a good faith effort, that's ok unless the problems affect health/safety.
 - ▶ If they're not made within 14 days (or if landlord doesn't at least make a good faith effort to start repairs), tenant can:
 - ▶ Terminate the rental agreement
 - ▶ Sue for damages in Magistrate's Court
 - ▶ Ask the Magistrate's Court for an order requiring the landlord to make repairs

Maintaining the Property

T's Responsibility

Anything that is damaged because of

- ▶ Negligence
- ▶ Misuse
- ▶ Abuse

by the tenant, their household members, or guests.

LL's Responsibility

- ▶ Everything else!
 - ▶ Normal wear and tear

Access to the Property

- ▶ LL has the right to reasonable access to the property:
 - ▶ Can enter property without T's consent IF:
 - ▶ It's an emergency, or
 - ▶ LL announces his intent to enter ("knock and announce"):
 - ▶ Between 9am and 6pm to perform regular maintenance
 - ▶ Between 8am and 8pm to perform services requested by tenant
 - ▶ Can enter with T's consent in other cases with 24 hours notice
 - ▶ But, LL can't abuse this access (e.g. use it to harass/annoy T) even if LL is strictly following these rules.
 - ▶ T can't change the locks without LL's permission

Security Deposits

► Landlord Tips:

- Take pics before move-in, take pics at move-out.
- Be very careful deducting from or withholding a security deposit.
 - Penalty for “wrongfully withholding” a security deposit is three times the amount wrongfully withheld plus reasonable attorney’s fees.
- Have to either return the deposit or return what’s left after deductions (along with an itemized list of those deductions) to the tenant within 30 days after:
 1. Tenant’s lease ends,
 2. Tenant moves out, and
 3. Tenant asks for the deposit back and gives you a forwarding address (have to send to last known address even if no forwarding address given)

Landlord Rules

- ▶ These have to be for the purpose of
 - ▶ Promoting convenience, safety, or welfare of the tenants;
 - ▶ Preserving LL's property from abusive use;
 - ▶ Or making fair distribution of services and facilities that are for the use of all tenants.
- ▶ They have to be reasonably related to that purpose
- ▶ They have to be clear
- ▶ They have to be fairly applied
- ▶ T has to have notice of them
- ▶ T has to be notified of any rule change which “substantially modify T's bargain” and given an opportunity to object. If T objects, the rule change doesn't apply to them.

Lease Termination and Eviction

The Two Step

1. Terminate the Lease

- ▶ This has to happen first. A tenant with a valid lease has the right to possess the property.
- ▶ When and how this happens depends on *why* the lease is being terminated.

2. File an Eviction Case

- ▶ This is a lawsuit seeking possession of the property only.
- ▶ Asks the court to issue an order that says the sheriff can remove tenant from the property if they have not already moved out.

Reasons for Termination: Non-Payment of Rent

► Requirements for Termination:

- The rent is due and has not been paid;
- LL has given T a *written* notice which gives T at least 5 days to pay what is owed;
- T has not paid within that time.

Reasons for Termination: Breach of the Lease

- ▶ Requirements for Termination
 - ▶ LL has given T a *written* notice which
 1. Specifies the alleged breach;
 2. Gives T at least 14 days to fix the breach in most cases
 - ▶ T has failed to fix the breach within that time
- ▶ The notice should do two things
 1. Tell T what they need to do to fix the breach
 2. Give the T enough detail to let them prepare a defense
- ▶ In some situations, LL may be able to give less than 14 days notice (threat to health or safety). Still have to give notice and a chance to fix the problem.

Reasons for Termination:

End of Lease Term

- ▶ When the term of the lease ends, nobody *has* to renew it unless the lease says otherwise.
- ▶ How much notice depends on the term of the lease and the rental agreement.
- ▶ 30 days notice is the minimum...usually (see 27-35-130)
- ▶ Don't ever do this for subsidized housing unless you're a HCVP landlord!

Eviction

- ▶ After the lease is terminated, landlord can file an eviction case
- ▶ Tenant should be served with notice
 - ▶ May be handed papers in person, but the papers can also be posted at the place tenant is renting (and sometimes mailed)
 - ▶ LL, you can't serve these papers! Has to be done by someone who's not a party to the case (usually the sheriff's/police department)
- ▶ Tenant gets 10 days after they're served to respond

Eviction

- ▶ The Court should schedule a hearing
 - ▶ If T responds, they can plead their case with the Court.
- ▶ The Court can order a “Writ of Ejectment” if it decides LL has a right to have T evicted.
 - ▶ This should be delivered and posted at the property by the Sheriff’s office.
 - ▶ It may say when T is scheduled to be removed
 - ▶ At minimum, you should get 24 hours after the notice is delivered or posted.
 - ▶ When the time comes, T and their personal property can be removed by the Sheriff

Common Issues

Bad Notice

- ▶ Remember the notice periods!
 - ▶ 5 days for nonpayment of rent
 - ▶ Usually 14 days for lease violations
 - ▶ 30 days for end of the lease term
 - ▶ ...unless the lease sets a longer period (can't set a shorter one).
- ▶ Remember that these notices always have to be in writing.
- ▶ Don't file in Magistrate's Court before the notice period runs out!

Bad Notice

- ▶ Remember that a notice for nonpayment or for lease violations is also an opportunity to cure.
 - ▶ Meaning: if the tenant pays or fixes the lease violation within the notice period, it's as if there was no violation at all!
- ▶ Lease Violation Notices - Be Specific!
 - ▶ Say what the problem is and what the tenant needs to do to fix it.
 - ▶ The law requires it.
 - ▶ An opportunity to cure doesn't mean anything if the tenant doesn't know what to cure!

YOU OR SOMEONE IN YOUR HOUSEHOLD WAS INVOLVED
IN A VIOLENT CRIMINAL ACTIVITY. THIS IS A DIRECT
VIOLATION OF THE LEASE AND IS GROUNDS FOR
EVICTION. PLEASE REVIEW YOUR DWELLING LEASE.

This is a Fourteen Day written notice to vacate. It has been reported to us that you have a police report. This is a violation of your lease (Section 23-C) which states, "That the landlord may terminate the lease for criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control."

The reason for terminating the tenancy is as follows: (OPTIONAL)

DON'T WANT TO HAVE AS A TENANT

Bugs! - Whose Problem are They?

- ▶ This is opening a can of worms...
- ▶ The LL/T Act says:
 - ▶ T has to keep the place “reasonably clean” and comply with obligations primarily placed on tenants under building/housing codes.
 - ▶ LL has to maintain the property in a fit and habitable condition and comply with building/housing codes materially affecting health and safety.
- ▶ Many cities/counties have adopted at least portions of the International Property Maintenance Code - 2012
 - ▶ **This isn't true everywhere and sometimes these rules are modified before they are adopted....your mileage may vary.

309.2 Owner. The *owner* of any structure shall be responsible for pest elimination within the structure prior to renting or leasing the structure.

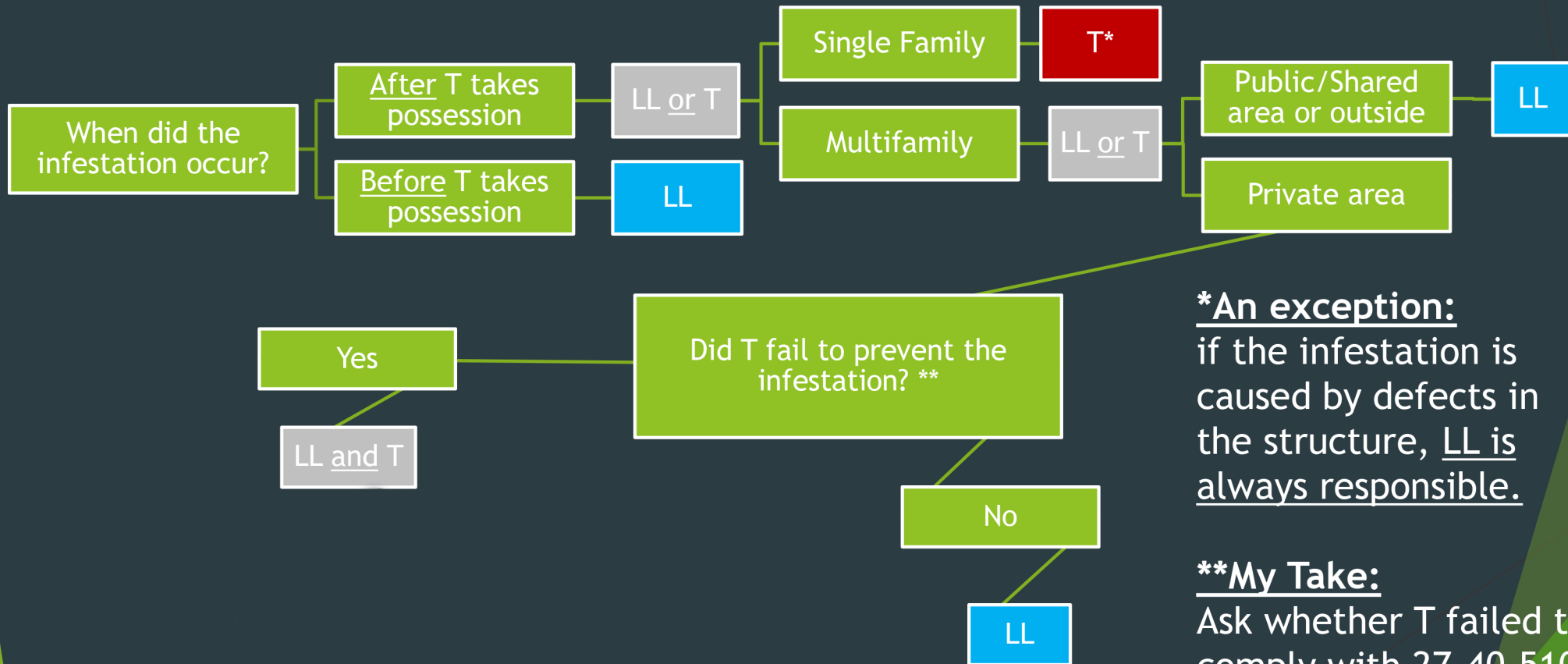
309.3 Single occupant. The *occupant* of a one-family dwelling or of a *single-tenant* nonresidential structure shall be responsible for pest elimination on the *premises*.

309.4 Multiple occupancy. The *owner* of a structure containing two or more *dwelling units*, a multiple *occupancy*, a *rooming house* or a nonresidential structure shall be responsible for pest elimination in the public or shared areas of the structure and *exterior property*. If *infestation* is caused by failure of an *occupant* to prevent such *infestation* in the area occupied, the *occupant* and *owner* shall be responsible for pest elimination.

309.5 Occupant. The *occupant* of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the *infestations* are caused by defects in the structure, the *owner* shall be responsible for pest elimination.

Bugs! - Who's Responsible?



***An exception:**
if the infestation is caused by defects in the structure, LL is always responsible.

****My Take:**
Ask whether T failed to comply with 27-40-510.

Bugs - What to do?

- ▶ If it's a single family home - LL may be able to bill T for extermination unless the problem was preexisting or results from a defect in the structure (e.g., water leaks provide a great environment for roaches).
- ▶ If it's a multifamily structure:
 - ▶ The public/shared areas and exterior are owner's responsibility
 - ▶ T is responsible for the area they occupy if they failed to prevent the infestation
 - ▶ If the infestation is caused by a defect in the structure, it's always LL's responsibility
- ▶ Practically?
 - ▶ It's risky to try to hold T responsible unless they're somehow at fault.
 - ▶ Best to have some evidence that T is at fault before holding them responsible for extermination costs.
 - ▶ Insurance!

Please don't:

- ▶ Ask tenants to pay extra rent or fees “on the side”...this is fraud involving federal money! (for voucher LLs)
- ▶ Shut off the water, power, etc. or change the locks. (for all LLs)
- ▶ Put anything in your lease that has T waive any rights they have under state law. (for all LLs)

Questions?

Domestic Violence Protections

The Violence Against Women Act

The Violence Against Women Act (“VAWA”)

- ▶ Passed in 2005 and reauthorized/expanded in 2013.
- ▶ Protections for domestic violence (“DV”) survivors in applying for subsidized housing
- ▶ Applies to men and women
- ▶ Protections against eviction and subsidy termination based on incidents of DV
- ▶ Allows removing a DV perpetrator from the unit through lease bifurcation
- ▶ Requires PHAs to have plans/goals to assist survivors and to have a model emergency transfer plan for survivors
- ▶ Notification of VAWA rights is required at several stages
- ▶ Now applies to substantially all federally subsidized housing including HUD and non-HUD programs (USDA and LIHTC).

Domestic Violence

- ▶ VAWA provides protections for survivors of:
 - ▶ Domestic Violence - crime of violence committed by a current/former spouse, intimate partner, person with whom the victim shares a child, or person who is or has lived with the victim.
 - ▶ Dating violence - violence committed by a person who was/is in an intimate social relationship with the victim (regs list three factors to consider)
 - ▶ Sexual Assault - any nonconsensual sexual act prohibited by law
 - ▶ Stalking - any conduct directed toward a specific person that would cause a reasonable person to fear for their safety or to suffer substantial emotional harm

Domestic Violence

- ▶ The DV doesn't have to be against the tenant or head of household. It can be against an "affiliated individual" and still qualify for VAWA protection
- ▶ "Affiliated individual" includes close family (spouse, parent, sibling, child or in loco parentis) or anyone living in the unit with the tenant.

VAWA Protections

▶ Admission

- ▶ HAs, LLs, and owners can't deny an applicant housing on the ground that the applicant is or has been an victim of DV.

▶ Eviction/Termination

- ▶ Can't evict a tenant on the ground that they are or have been a victim of DV
- ▶ An incident of actual or threatened DV is not a serious or repeated lease violation and cannot constitute good cause to evict the survivor or terminate their rental assistance.

Limits of VAWA Protection

- ▶ The HA or owner can evict if they can demonstrate an “actual and imminent threat” to other residents or employees at the property if the survivor is not evicted.
- ▶ HUD has defined what constitutes an actual and imminent threat:
 - ▶ Has to be real (not speculative)
 - ▶ Would occur within an immediate timeframe
 - ▶ Could result in death or serious bodily harm.
 - ▶ Should consider: duration of the risk, the nature/severity of the potential harm, likelihood that the potential harm will occur, the length of time before the potential harm would occur.
- ▶ Can only evict “when there are no other actions that could be taken to reduce or eliminate the threat. Consider:
 - ▶ Transferring the survivor to another unit, barring the abuser from the property, contacting law enforcement to increase police presence/develop plans to keep the property safe, seeking other remedies, among others.

Evidence of DV

- ▶ You don't need any evidence other than what T tells you!
 - ▶ HUD and VAWA don't require anything more than that.
- ▶ You may request documentation of the abuse.
 - ▶ The request for information has to be made in writing;
 - ▶ You may require that the information be submitted within 14 *business* days from the time the survivor *receives* the notice (though, you are free to extend this time)
- ▶ What documentation is adequate?
 - ▶ HUD Form 50066
 - ▶ Police report or court record
 - ▶ Documentation signed by someone from a victim service provider or an attorney/medical professional from whom the survivor has sought assistance addressing the DV. Person signing has to attest under penalty of perjury that, to their belief, the incidents are bona fide incidents of DV.
- ▶ This information has to be kept confidential!

Evidence of DV

- ▶ If you get conflicting certifications?
 - ▶ Try to determine who is the true victim by requiring third party documentation
 - ▶ Ex: Police reports, court orders, certification from a third party as discussed on last slide.

VAWA Remedies

- ▶ Lease bifurcation
 - ▶ “splits” the lease so that the HA or owner can evict the abuser and allow the survivor to remain;
 - ▶ If the remaining survivor is ineligible for the housing program, have to allow a reasonable time for them to establish eligibility, move, or establish eligibility under another subsidized housing program
- ▶ HCVP
 - ▶ The same option is available...essentially “split” the voucher
 - ▶ If a family breakup results from DV, “the PHA must ensure that the victim retains assistance”.

VAWA Remedies

▶ Voucher Portability

- ▶ A participant family who moves for their safety as a result of DV cannot be terminated for moving out in violation of the lease.
- ▶ The 1 year or “multiple move” prohibitions do not apply if a move is needed for safety as a result of DV.

▶ Unit Transfers

- ▶ HUD is supposed to be coming up with a model emergency transfer plan for use by HAs/Owners.
- ▶ HUD should also be coming up with policies for issuing tenant protection vouchers to facilitate emergency transfers
- ▶ No final HUD rule yet, but one has been proposed.
- ▶ HAs/Owner should probably still make this available where possible to avoid FHA concerns.

Questions?

Adam Protheroe

Housing Unit Head | Staff Attorney

South Carolina Legal Services

(803) 533-0116

adamprotheroe@sclegal.org